



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 3, 1996

Ms. Christine T. Rodriguez
Staff Attorney
Legal and Compliance, MC110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR96-0654

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38854.

The Texas Department of Insurance (the "department") received a request for the following information pertaining to Texas Employers Insurance Association ("TEIA") and/or Employers' Casualty Company ("ECC"):

1. Correspondence including hand-written notes, proffs notes, E-Mail, memos, and letters which may have been initiated or received by Doyce R. Lee, R.B. Ashworth, Charles T. Ramsey, Lee Powell, Bob Crawford, Scott Nance or Ron Newton;
2. Correspondence, including hand-written notes, proffs notes, E-Mail, memos, and letters pertaining to "loss reserve discounting" which may have been initiated by or received by Doyce R. Lee, R.B. Ashworth, Charles T. Ramsey, Lee Powell, Bob Crawford, Scott Nance or Ron Newton.

The requestor qualified his request for E-Mail to include only hard copies of documents within the scope of the request and does not expect the department to do a complete search for E-Mail at this time. You indicate some of the information will be provided to

the requestor. However, you maintain that the remaining portions of the requested information are excepted from required public disclosure pursuant to sections 552.101, 552.111, and 552.112 of the Government Code. You submitted representative samples of the information the department seeks to withhold from required public disclosure.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim section 552.101 in conjunction with Article 1.15B of the Insurance Code prohibits the disclosure of some of the information requested. Article 1.15B of the Insurance Code provides:

Any information relating to the financial solvency of any organization regulated by the department under this code or another insurance law of this state obtained by the department's early warning system is confidential and is not subject to disclosure under the open records law. . .

The purpose of the rules and regulations pertaining to the early warning system referenced in Article 1.15B of the Insurance Code is to enumerate conditions which may indicate an insurer is in a hazardous condition which may be a basis for the department to initiate an action against the insurer under the Insurance Code, articles 1.32, 3.55-1. or 212.28-A. See 28 TAC §8.1.

We reviewed the documents submitted for our consideration which you claim fall under section 552.101 as originating from the department's early warning system. We agree that the content of most of the documents submitted under this exception reveal that they fall within its parameters and so may be withheld, yet some documents which we have marked for your reference do not reveal their source as coming from the department's early warning system and must be released.

Section 552.111 excepts from disclosure "only those internal agency communications consisting of advice, recommendations, opinions and other material reflecting the deliberative or policymaking processes of the governmental body at issue." Open Records Decision No. 615 (1993) at 5. This exception is intended to protect advice and opinions given on policy matters and to encourage frank and open discussions within an agency in connection with the agency's decision-making processes. *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 412 (Tex. App.--Austin 1992, no writ) (citing *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.)). This section does not protect facts or written observations of facts. Open Records Decision No. 615 (1993) at 5. We have reviewed your markings of the information which you maintain contain advice, opinion, or recommendations relating to the policy functions of the Commission subject to nondisclosure under section 552.111.

We have marked the information that the department may withhold from required public disclosure based on section 552.111.

Last, section 552.112(a) excepts from required public disclosure:

information contained in or relating to examination, operating, or condition reports prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities, or both.

Insurance companies are included within the term "financial institutions" for purposes of section 552.112(a). Open Records Decision No. 158 (1977) at 5-6. This exception may protect information that indirectly reveals the contents of examination, operating, or condition reports. See Open Records Decision No. 261 (1980) (conclusions of examination report of state bank). We have reviewed your marked portions of the requested information which contain written summaries, e-mail reports, and hand written notes prepared by and for the department dealing with the examination, operation and condition of several insurance companies and we agree that the department may withhold this information from required public disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision.¹ This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

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¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office. Moreover, we caution you that when asserting section 552.111, we do not believe the submission of representative samples is appropriate.

Ref.: ID# 38854

Enclosures: Marked documents

cc: Mr. John L. Foster
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(w/o enclosures)